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ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TROY MATTOS and JAYZEL MATTOS,)	CIVIL NO. 07-00220 DAE/BMK
Plaintiffs,)	PLAINTIFFS' CONCISE
vs.)	STATEMENT OF MATERIAL
DARREN AGARANO, RYAN AIKALA, STUART KUNIOKA, HALAYUDHA MACKNIGHT, MAUI COUNTY, AND JOHN DOES 1-10,)	FACTS IN OPPOSITION TO
Defendants.)	COUNTY DEFENDANTS'
)	MOTION FOR SUMMARY
)	JUDGMENT; AFFIDAVIT OF
)	DELLA A. BELATTI; EXHIBITS 1-
)	10; CERTIFICATE OF SERVICE

PLAINTIFFS' CONCISE STATEMENT OF MATERIAL FACTS

Plaintiffs TROY MATTOS and JAYZEL MATTOS, by and through their undersigned attorneys, herein submit the following Concise Statement of Material Facts in opposition to County Defendants' Motion for Summary Judgment pursuant to LR. 56.1

of the Local Rules of Practice for the United States District Court for the District of Hawaii.

<u>Facts</u>	<u>Evidentiary Support</u>
1. Admit.	
2. When told that there was a 911 call, Troy asked if one of his neighbors called.	Exh. 1 at p. 45, ll. 17-22.
3. During Plaintiffs' argument, Jayzel asked Cheynice, her daughter, to call the police.	Exh. 2 at p. 35, ll. 13-21.
4. Cheynice called 911 at 11:20 pm.	Exh. 3 at para. 3.
5. Plaintiffs' residence was a little messy because they were packing to move.	Exh. 1 at p. 60, ll. 3-9.
6. Admit.	Exh. 4 at COM 0021.
7. Admit.	
8. Admit.	Exh. 1 at p.10-11, ll. 24-3.
9. Admit.	
10. Upon Officer Kunioka's arrival at Plaintiffs' residence, there were two beer bottles near Mattos, one empty and one half-full.	Exh. 4 at COM 0020.
11. Officer Kunioka observed the odor of liquor on Troy's breath.	Exh. 4 at COM 0020.
12. Troy appeared to be irritated and was sarcastic in his answers.	Exh. 4 at COM 0020.
13. Mattos had been drinking 4 or 5 hours and was feeling just a little of the effects.	Exh. 1 at p. 38.
14. Officer Kunioka walked up the steps, asked Troy what was going on, and Troy responded by saying, "nothing."	Exh. 1 at p. 41, ll. 19-22; Exh. 4 at COM 0020.
15. Admit.	Exh. 4 at COM 0020.
16. Admit.	Exh. 4 at COM 0020.
17. Admit.	Exh. 4 at COM 0020.
18. Admit.	Exh. 4 at COM 0020.
19. Admit.	Exh. 4 at COM 0020.
20. Troy called out to Jayzel twice, but there was no response.	Exh. 1 at p. 53, ll. 1-12.
21. The police informed Troy that "if everything was fine, they would leave."	Exh. 1 at p.53, ll. 23-24.
22. Troy went inside his house to get Jayzel in compliance with the officers' request.	Exh. 1 at p. 53, l.12 and p. 54, ll. 1-2.
23. Troy entered into his house, closed the screen door behind him, and instructed all the officers to "wait right here."	Exh. 1 at p. 54, ll. 6-8.

24. Officer Agarano opened the door and stepped into Plaintiffs' residence for officer safety and to further investigate.	Exh. 5 at COM 0017.
25. Troy did not see Officer Agarano searching his home.	Exh. 1 at p. 167, ll. 7-9.
26. Pursuant to Rule 56(f), Federal Rules of Civil Procedure (FRCP), Plaintiffs cannot present facts essential to justify its opposition with respect to this Statement of Fact.	Affidavit of Della A. Belatti; Exhs. 9-10.
27. Admit.	Exh. 6 at COM 0022.
28. As Troy started walking down the hallway, he was in front of Jayzel. When Troy entered the living room, Jayzel passed in front of Troy so that as they approached Officer Agarano, Jayzel was in front of Troy.	Exh. 1 at p. 67 at ll. 9-19.
29. Jayzel was wearing her sleep clothes when she walked with Troy out of the bathroom.	Exh. 2 at p. 40, ll. 17-20, p. 47, ll. 1-6, ll. 24-25.
30. When Officer Aikala told Plaintiffs "We got a 911 call from this house," Jayzel did not address Officer Aikala because she was talking with Officer Agarano. Troy responded to Officer Aikala by saying that Plaintiffs did not have a house phone because Troy did not want Officer Aikala in his house.	Exh. 2 at p. 68, ll. 22-25; Exh. 1 at p. 83, ll. 2-17.
31. Troy said to Officer Agarano, "No offense brah but I neva invite you in my house." Agarano said, "I'm not in our house I'm just standing here." So I said, "Yeah, but you standing on my carpet." Agarano then responded, "I'm just standing here." Troy state, "Yeah, but you in my house. You standing on my carpet. I neva invite you in my house. You don't have the right for just come into my house."	Exh. 7 at pp. 4-5.
32. Admit.	Exh. 2 at p. 89, ll. 20-22.
33. Admit.	Exh. 1 at p. 127, ll. 21-23.
34. Admit.	Exh. 1 at p. 90, ll. 24-25, p. 91, ll. 1-11.
35. While Troy was talking to Officer Agarano and telling Officer Agarano, "You don't have the right for just come into my house," Officer Agarano turned to Jayzel and asked if he could talk to her outside. As Troy and Jayzel were complying with Officer Agarano's request, Officer Aikala rushed into Plaintiffs' house and stood in the middle of the living room. With both Officer Aikala and Officer Agarano in Plaintiffs' house, Troy said "Fuck that! You no more the right to just come into my house. We was going outside?" Officer Aikala then told Troy, "Eh, you know what...Fuck You!" Troy swore at Officer Aikala. Officer Aikala told	Exh. 7 at p. 5.

Troy he was under arrest for swearing at an officer.	
36. While Jayzel was talking to Officer Agarano, Officer Aikala bumped into Jayzel in his attempt to apprehend Troy. Jayzel was flushed against her husband with Officer Aikala in her chest.	Exh. 8 at p. 3.
37. While Jayzel was talking to Officer Agarano, Officer Aikala bumped into Jayzel in his attempt to apprehend Troy.	Exh. 8 at p.3.
38. Officer Aikala asked Jayzel, "Are you touching an officer?"	Exh. 8 at p.3.
39. Before she was tased, Jayzel was not informed that she would be tased.	Exh. 2 at p. 76; Exh. 8 at p. 3.
40. While Jayzel was talking to Officer Agarano, Officer Aikala bumped into Jayzel in his attempt to apprehend Troy.	Exh. 8 at p.3.
41. After asking Officer Agarano why they were arresting Troy, Jayzel stated "Let's just go outside. Everybody calm down. Please don't make noise in my house. My kids are sleeping."	Exh. 2 at p. 75, ll. 6-15.
42. Jayzel was tased while she was talking to Officer Agarano and looking in his direction.	Exh. 2 at p. 76, ll. 8-11.
43. Pursuant to Rule 56(f), FRCP, Plaintiffs cannot present facts essential to justify its opposition with respect to this Statement of Fact.	Affidavit of Della A. Belatti; Exhs. 9-10.
44. Jayzel asked Officer Aikala to remove the taser prongs. Officer Aikala stated "If you want it out, take it out." Jayzel pulled on it once. Officer Aikala told her she would have to pull harder. Jayzel pulled the prongs out of her chest and hand.	Exh. 2 at p. 89, ll. 15-25, p. 90, ll. 1-21.
45. While Jayzel was being tased, Troy moved forward to grab Jayzel.	Exh. 7 at p.5.
46. As Troy attempted to grab his wife after she was tased, Officers Agarano and MacKnight handcuffed Troy.	Exh. 7 at p. 5.
47. Jayzel was told to stop moving or she would be tased again. Jayzel stated, "Well, go ahead. I'm not going to let my son see me." Jayzel, thereafter, sat up.	Exh. 2 at p. 86, ll. 22-25, p. 87, ll. 24-25, p. 88, ll. 1-5.
48. After Officer Aikala grabbed Jayzel's arm and squeezed it, Jayzel told Officer Aikala, "If you think that you and your badge is intimidating me, you're not." Officer Aikala responded to this comment and said for a second time, "Fuck you, you bitch."	Exh. 2 at p. 104, ll. 20-25, p. 105, ll. 1-4.
49. After Troy was handcuffed, he "called the officers a bunch of fags and asked how could they do this to my wife, my family, and me." After he was handcuffed, Troy also	Exh. 1 at p. 126, ll. 2-12, p. 127, ll. 1-6.

told Aikala he "was only acting big because [he] had one badge and [he's] nothing."	
50. The entire encounter inside the Plaintiffs' residence happened pretty quickly and lasted a few minutes.	Exh. 1 at p. 104, ll. 1-3.
51. Troy was not physically injured, but he was emotionally injured by the events of August 23, 2006.	Exh. 1 at p. 115, ll. 6-23.
52. Neighbors came outside and saw Troy get arrested.	Exh. 1 at p.134, ll. 6-10.
53. Pursuant to Rule 56(f), Federal Rules of Civil Procedure (FRCP), Plaintiffs cannot present facts essential to justify its opposition with respect to this Statement of Fact.	Affidavit of Della A. Belatti; Exhs. 9-10.
54. Pursuant to Rule 56(f), FRCP, Plaintiffs cannot present facts essential to justify its opposition with respect to this Statement of Fact.	Affidavit of Della A. Belatti; Exhs. 9-10.
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59. Pursuant to Rule 56(f), FRCP, Plaintiffs cannot present facts essential to justify its opposition with respect to this Statement of Fact.	Affidavit of Della A. Belatti; Exhs. 9-10.
60. Troy has not talked to the Chief of Police or the Mayor of Maui regarding the events in this case.	Exh. 1 at p. 146, ll. 10-14.
61. Admit.	Exh. 2 at p. 78, ll. 7-10.

Dated: Honolulu, Hawaii, February 1, 2008.



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Attorneys for Plaintiff